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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 BOY 7,

9 Plaintiff,

10 v.

11 BOY SCOUTS OF AMERICA,

12 Defendant.
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NO. CV-10-449-RHW

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS FIRST AMENDED
COMPLAINT PURSUANT TO
RULE 12(b)(6)**

14 Before the Court is Defendant's Motion to Dismiss First Amended
15 Complaint Pursuant to Rule 12(b)(6) (ECF No.23). The motion was heard without
16 oral argument.

17 Plaintiff filed his first complaint on December 21, 2010. The Court
18 dismissed the complaint without prejudice and granted leave to amend (ECF No.
19 20). On June 22, 2011, Plaintiff filed an Amended Complaint (ECF No. 21),
20 "adding facts about his vulnerability when he was sexually abused, the
21 foreseeability of Plaintiff's abuse, BSA's custody over him when the abuse
22 occurred, and the location where the abuse occurred." (ECF No. 27, p.2). In his
23 complaint, Plaintiff argues that BSA knew or should have known that his abuser
24 was a sexual predator of boys, however he fails to allege specific facts regarding
25 how BSA knew or should have known that the Scout Leader had previously abused
26 children or made inappropriate advances toward them. For the same reasons stated
27 in the Court's prior order, this is fatal to his claims of negligence and intentional
28 infliction of emotional distress. Additionally, Plaintiff has not corrected the

1 deficiencies with respect to his civil conspiracy claim.

2 Plaintiff argues that a recent case of *M.H. v. Catholic Archbishop of Seattle*,
3 162 Wash. App. 183 (2011), stands for the proposition that an entity that has a duty
4 to protect children based on a “special relationship” need not have previous
5 knowledge of a sexual assailant’s dangerous propensities. However, the facts in
6 that case are readily distinguishable. In that case, the Archdiocese assigned a
7 priest, with a known history of sexual misconduct with children, to be the associate
8 pastor. *Id.* at 186. The complaint alleged facts that demonstrated that the priest
9 knew that an unidentified man planned to sexually abuse the victim and was
10 instrumental in arranging the opportunity for the man to do so. *Id.* at 192. The
11 Court of Appeals held that the sexual molestation of the victim was not “wholly
12 beyond the range of expectability,” especially given the Archdiocese prior
13 knowledge of the priest’s history of sexual misconduct, and thus was foreseeable.
14 *Id.* at 193. Plaintiff’s complaint fails to allege any facts that would establish that it
15 was reasonably foreseeable that this particular Scout Leader would abuse Plaintiff.

16 Accordingly, **IT IS HEREBY ORDERED:**

17 1. Defendant’s Motion to Dismiss First Amended Complaint Pursuant to
18 Rule 12(b)(6) (ECF No. 23) is **GRANTED**.

19 2. The above-captioned case is **dismissed** with prejudice.

20 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
21 Order, forward copies to counsel and **close the file**.

22 **DATED** this 28th day of September, 2011.

23
24 s/Robert H. Whaley

25 ROBERT H. WHALEY
26 United States District Judge

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